



Jane Dee Hull, Governor

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E-Mail Your Questions

If you have a question that you cannot find the answer for, our Technical Assistance personnel may prove useful to you. We will gladly respond to any e-mail technical tax inquiry with the exception of specific account inquiries. All inquiries will be responded to within two working days.

E-mail your question to:
TaxpayerAssistance@revenue.state.az.us

In the interest of maintaining confidentiality, DOR can not respond to inquiries that include a Social Security number, FEIN, TPT or W/H number, or other specific taxpayer identifiers.

State Income Taxation of Members of the Arizona National Guard

Question Presented

You have asked whether the pay and allowances paid to individual members of the Arizona National Guard are subject to Arizona's income tax.⁽¹⁾

Summary Answers

The Soldiers' and Sailors' Civil Relief Act does not exempt members of the Arizona National Guard who are residents of Arizona from Arizona income tax on their compensation and allowances.

Background

The National Guard is the modern militia reserved to the states by Article I, section 8, clauses 15 and 16 of the United States Constitution. *Maryland v. United States*, 381 U.S. 41, 46 (1965), *vacated on other grounds*, 382 U.S. 159 (1965); *see also* Ariz. Const. art. XVI, § 2 ("The organized militia shall be designated the National Guard of Arizona . . ."). Except when activated for service by the President of the United States, the National Guard of Arizona is considered a State organization. *Williams v. Superior Court*, 108 Ariz. 154, 158, 494 P.2d 26, 30 (1972); *see also* Ariz. Const. art. V, § 3 ("The Governor shall be commander-in-chief of the military forces of the State, except when such forces shall be called into the

service of the United States."). The Governor is the commander-in-chief, and the Arizona Adjutant General acts as the Governor's military chief of staff. A.R.S. § 26-102(A). When on duty, members of the National Guard are under the command and at least indirect supervision of the Arizona Adjutant General. *Id.* The National Guard is governed by State, as well as federal laws. *See, e.g.*, 32 U.S.C. §§ 101 through 502; A.R.S. §§ 26-101 through -253.

Your opinion request describes two types of affiliation with the National Guard. First, there is the traditional guardsman who serves essentially one weekend a month and a two-week annual training period. For these periods, the guardsman receives pay and allowances from the Department of Defense due to the dual status of being a part of the Reserve Forces of the United States. The second category is the full-time member, who receives full-time pay and allowances. This second category is considered "full-time National Guard duty" under federal law. *See* 32 U.S.C. § 101(19). According to your opinion request, there are individuals in both categories who reside in Arizona and perform their duties primarily within the State of Arizona. *See* A.R.S. § 26-155 (able-bodied residents of the State may be

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***** REMINDER *****

FOR NON-EFT TPT FILERS

To avoid a delinquency, postmark your November 2000 TPT return no later than December 26th or deliver to DOR no later than December 28, 2000.

SEPTEMBER Summary of General Fund Revenues

	<u>August 2000</u>	<u>Fiscal Year Total</u>
Individual Income Tax		
Net Collections	\$216,313,558	\$516,121,899
Percent Change *	15.3%	11.6%
Corporate Income Tax		
Net Collections	\$151,137,752	\$178,611,806
Percent Change *	38.1%	40%
Transaction Privilege, Severance & Use Taxes		
Net Collections	\$243,983,596	\$738,678,854
Percent Change *	11.8%	9.4%
Total Big Three Tax Types		
Net Collections	\$611,434,906	\$1,433,412,559
Percent Change *	18.6%	13.3%

() Decrease from same month last year.

* Percent change from same month last year.

Individual Income Tax

Individual Income Tax Receipts

	September 00	September 99	Change
Gross Collections	\$80,345,736	\$73,625,331	9.1%
Withholding	176,490,910	159,552,145	10.6
Refunds	(7,485,367)	(14,038,584)	(46.7)
Urban Rev Sharing	(33,037,720)	(31,475,916)	5.0
Net Collections	\$216,313,558	\$187,662,977	15.3
Fiscal Year Total (99/00) (98/99) Change			
Gross Collections	\$105,769,786	\$95,819,103	10.4
Withholding	553,279,424	505,333,162	9.5
Refunds	(43,814,152)	(44,380,269)	(1.3)
Urban Rev Sharing	(99,113,160)	(94,427,748)	5.0
Net Collections	\$516,121,899	\$462,344,248	11.6

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TAX CALENDAR

DECEMBER 2000

Due Date		For Period Ending
15	Income Tax Returns: Form 120: Corporation Form 140: Individual Form 141: Fiduciary Form 165: Partnership	8/31/00
15	Form 120: Corporation with Automatic Extension	2/28/00
15	Form 120S: S Corporation	9/30/00
15	Exempt Organizations Form 99: Annual Information Return Form 99T: Exempt Organization	7/31/00
15	Form 120ES: Estimated Tax Payment, Corporation First Installment Second Installment Third Installment Fourth Installment	8/31/01 6/30/01 3/31/01 12/31/00
20	Form TPT-1: Transaction Privilege Tax: November Monthly Filers	11/30/00
20	Bingo: Financial Reports	11/30/00
20	Luxury Tax: Various Forms	11/30/00
25	State Holiday - Christmas	All State Offices Closed
26	EFT Form TPT-1 and Payment: Transaction Privilege Tax: November Monthly Filers	11/30/00
	<i>Withholding Tax Payment Information:</i>	

If the average amount of Arizona income taxes withheld in the preceding four calendar quarters **exceeds** \$1,500 the employer must make its Arizona withholding payments to the Department of Revenue at the same time as the employer is required to make federal withholding deposits.

If the average amount of Arizona income taxes withheld in the preceding four calendar quarters **does not exceed** \$1,500 the employer must make its Arizona withholding payments to the department on a quarterly basis.

The Arizona Tax News is a monthly publication of the Arizona Department of Revenue. Information contained herein is of a general nature and is not designed to address complex issues in detail. Taxpayers requiring information concerning a specific tax matter should contact the appropriate office. This newsletter is available in alternative formats upon request by calling the telephone number shown below. Subscription information may be obtained from Tony Manzo at (602) 542-3062 or toll free 1 (877) 863-0655.

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enlisted as members of the National Guard).

The Soldiers' and Sailors' Relief Act

The Soldiers' and Sailors' Civil Relief Act of 1940 ("Act"), 50 U.S.C. app. §§ 501- 593 applies special legal rules to persons in the military service of the United States. Among other things, the Act defines the residence of military personnel for tax purposes. *See* 50 U.S.C. app. § 574. For income tax purposes, the Act has two components. First, a person shall not be deemed to have lost a residence or domicile in a state because he or she is absent from the state in compliance with military or naval orders, and the person does not acquire a residence or domicile in any other state solely by reason of being absent from his or her home state. *See* 50 U.S.C. app. § 574. Thus, a person's residence or domicile remains the same even if the person moves to other states while in the military. Second, compensation for military or naval service shall not be deemed income for services within a state if the recipient is not a resident or domiciliary. In other words, if a military person is working within a state but is not a resident or domiciliary of that state, the state of actual physical location may not impose an income tax on that person's military compensation. Your question concerns the application of these principles to members of the Arizona National Guard subject to State command. This Opinion does not apply to federal military personnel on active duty assigned to assist the National Guard, such as the Property and Fiscal Officer ("PFO"). *See* Ariz. Att'y Gen. Op. 199-007 ("The PFO is an active duty federal officer subject to federal control, and does not fall within the State command.").

Analysis

Arizona residents and domiciliaries are subject to Arizona income taxation because Arizona taxes its residents on all of their income, even from sources outside the State. A.R.S. § 43-102 (4). Under Arizona law, compensation paid to members of the Arizona National Guard who are Arizona residents is subject to Arizona income tax.⁽²⁾

The Act does not limit Arizona's ability to tax

National Guard members who are Arizona residents and are subject to State command because the Act does not apply to them. The Act applies to any "person in military service," which includes "persons and no others" who are members of the Army, Navy, Marine Corps, Air Force, Coast Guard, and all officers of the Public Health Service. 50 U.S.C. app. § 511(1). "Military service" under the Act includes "Federal service on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service." *Id.* Although annual training of National Guard personnel may, to some extent, be under the supervision of the United States, it is not "preliminary to induction into the service" within the meaning of the Act. *See* A.R.S. § 26-171 (National Guard training). Therefore, the members of the National Guard subject to State command are not "person [s] in military service" under the Act. Consequently, the Act's provisions regarding residency for income tax purposes do not apply to members of the National Guard, either part- or full-time, who are subject to State command.

Conclusion

Members of the Arizona National Guard who are residents of Arizona are subject to Arizona income tax on their compensation and allowances. The Soldiers' and Sailors' Relief Act does not prevent such persons from being treated as Arizona residents for purposes of income taxation.

Janet Napolitano **Attorney General**

1. You submitted your request under Arizona Revised Statutes ("A.R.S.") § 26-177, which provides "the attorney general shall, upon request of the adjutant general or the staff judge advocate of the national guard, give opinions upon legal questions pertaining to military affairs of the state."
2. Whether a particular person is a resident of Arizona requires a fact-specific inquiry beyond the scope of this Opinion. *Cf.* A.R.S. § 43-104 (19) (defining "resident" for purposes of the income tax).

2000 Property Tax Legislative Summary

S.B. 1251: Common Areas (CH. 196)

This bill changes the structure for the ownership of common areas. The residential property owners must either 1) be members of the non-profit association or corporation which owns the common areas, or 2) they must be obligated to pay mandatory assessments to maintain the common area. Under this bill, a corporation, of which no

residential owners are members, may own the common areas. As long as the residential owners are required to pay assessments, which ultimately are channeled to the owning corporation, the property qualifies for this valuation method. Effective retroactively after December 31, 1998.

H.B. 2287: Valuation of Renewable Energy Equipment (CH. 214)

This bill establishes a value of renewable energy equipment as 20% of the depreciated cost of the equipment. This applies to equipment owned by a gas or electric utility

company and used to generate, store, transmit or distribute electric power, energy or fuel derived from solar, wind or other non-petroleum sources.

H.C.R. 2028: Property Valuation Protection for Elderly

This resolution, if approved by the voters in the General Election in November 2000, will permit a resident of Arizona who is over 65 to apply to the County Assessor for a property valuation protection option on that person's primary residence. The applicant must have lived in the residence for two years, and there is a restriction on the total income the applicant may receive. The Assessor must review the income qualifications on a triennial basis, and must average the total income for the previous three years. If

approved, the value of the property remains fixed at the value in effect during the year the application is filed with the Assessor. The applicant must reapply every three years. If the applicant subsequently sells the property to a nonqualified owner, the property protection option terminates. This applies to homes, condominiums and mobile homes. The Uniformity Clause of the Constitution is also amended to provide for this disparate treatment based on age and income.

S.B. 1427: Personal Property Tax Collections; Remedies (CH. 125)

This bill amends the procedure used by the Sheriff to sell personal property for delinquent property taxes.

H.B. 2331: Property Tax Administration (CH. 84)

By way of background, in 1999, the Arizona Legislature passed H.B. 2428. This law, which becomes effective on January 1, 2001, eliminates the distinctions between "secured" and "unsecured" personal property. Prior to the passage of this bill, two similarly situated taxpayers with identical personal property could be subjected to different tax rates and different appeals procedures, depending on which roll their personal property was placed. This disparity created a variety of legal and policy problems. Since the passage of this law, three counties have been the primary opponents of this change. Those counties are Cochise, Yuma and Mohave. H.B. 2331 recreates the statutory framework that was repealed last year, puts it into session law, and phases it out over three years.

This bill also deals with several other areas:

- Amends A.R.S. § 42-13302 to provide for

limited value adjustment if parcels are split or consolidated.

- Provides for personal liability for tax on personal property for the owner of the personal property who does not own real property with a value in excess of \$200.
- The Notice of Value for personal property shall be mailed on or before October 1, and must include the amount of property taxes due. The owner or person in possession of the property may appeal this value.
- The personal property roll must be certified by August 25.
- Amends the time when delinquent personal property taxes are transmitted to the sheriff for collection.

Effective after December 31, 2000, except for the limited value provision.

S.B. 1424: Property Tax; Corrections Act (CH. 390)

Most of the technical corrections in this bill are as a result of House Bill 2634 (Chapter 344), passed in the 1999 legislative session. HB 2634, also known as the "Class Consolidation Bill," made significant changes to the number of property tax classes and the statutory citations referencing this system. The predecessor of HB 2634 died during the session, but was introduced again as an

amendment in a conference committee. There was insufficient time to thoroughly analyze the provisions of this bill. As a result, there were numerous conflicts and mistakes, which SB 1424 is attempting to correct. There are other corrections resulting from amendments to statutes, other than those contained in HB 2634.

H.B. 2060: Agricultural Preservation District Land (CH. 267)

Although this bill is not a property tax bill, it does provide for an income tax credit for a taxpayer who conveys ownership or

development rights of property to an agricultural preservation district under A.R.S. § 48-5702.

Model City Tax Code Changes

Goodyear Change In City Tax Code Effective January 1, 2001

The Mayor and City Council of the City of Goodyear passed Ordinance 2000-712. Ordinance 2000-712 imposes an Additional Tax on Transient Lodging of 2% to be reported using Code GY3. This is in addition to the City Privilege Tax on the Hotel

classification for a total of 4%.

Ordinance 2000-712 also increases the Privilege tax rate on the Restaurant & Bar classification to 4%, to be reported using Code GY5.